

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petitions of )  
)  
SAN ELIJO RANCH, INC. and )  
CITY OF SAN MARCOS )  
)  
For Review of Stay of Addendum No. 2 )  
Modifying Order No. 92-02, Waste )  
Discharge Requirements for the )  
County of San Diego, San Marcos )  
Sanitary Landfill, by the California )  
Regional Water Quality Control Board )  
San Diego Region. Our File )  
Nos. A-976 and A-976(a). )  
\_\_\_\_\_ )

ORDER NO. WQ 95-3

BY THE BOARD:

I. INTRODUCTION

On May 16, 1995, the California Regional Water Quality Control Board, San Diego Region (RWQCB), adopted Addendum No. 2 to its Order No. 92-02. Order No. 92-02 prescribes waste discharge requirements for the discharge of nonhazardous solid waste to a vertical expansion of the San Marcos Sanitary Landfill. San Elijo Ranch, Inc. and the City of San Marcos filed petitions with this Board on June 15, 1995 asking that the RWQCB's action be rescinded. The petitioners also submitted requests for a stay of the effect of Addendum No. 2 until the merits of the petitioners are reviewed. On July 5, 1995, this Board held a public hearing to receive evidence and argument as to whether a stay should be granted.

For the reasons specified below, the requests for a stay will be denied.

## II. DISCUSSION

This Board reviewed the appropriateness of Order No. 92-02 in 1993 in response to petitions which requested that the vertical expansion not be approved. On June 17, 1993, State Water Resources Control Board (SWRCB) Order No. WQ 93-8 was adopted. This Board approved the vertical expansion but amended the waste discharge requirements to provide for several design and other improvements. Provision B.16 was added to read:

"Upon commencement of operation of the landfill's recycling center, at least 75 percent of all waste disposed at the site shall be no greater than 4 inches in size."

This provision was added to the waste discharge requirements based on the following finding contained in SWRCB Order No. WQ 93-8:

"A proposed waste size reduction system, to be installed as part of the recycling center at the landfill should be fully developed. This system, by increasing the moisture holding capacity of the waste, will assist in minimizing the creation of leachate. It will also address the concern about differential settlement by assuring a uniform type of waste product."

On May 16, 1995, the RWQCB adopted Addendum No. 2 to the waste discharge requirements. This addendum deleted Provision B.16 which has come to be known as the shredding requirement. This change to the waste discharge requirements was proposed by the County of San Diego, which operates the San Marcos Sanitary Landfill (landfill). The County desired to close the recycling center, which shreds the waste, based on economic considerations.

Water Code Section 13321 authorizes the SWRCB to stay the effect of Regional Water Quality Control Board decisions. This Board's administrative regulations, recognizing the extraordinary nature of a stay remedy, place a heavy burden on the seeker of a stay:

"(a) A stay of the effect of an action of a regional board shall be granted only if petitioner alleges facts and produces proof of:

(1) substantial harm to petitioner or to the public interest if a stay is not granted,

(2) a lack of substantial harm to other interested persons and to the public if a stay is granted and,

(3) substantial questions of fact or law regarding the disputed action." (Title 23, California Code of Regulations, Section 2053.)

Petitioners have not met this heavy burden.

### III. CONTENTIONS AND FINDINGS

1. Contention: Petitioners have not shown substantial harm to them or the public if a stay is not granted.

Finding: Petitioners allege that elimination of the shredding requirement will cause adverse impacts on ground water quality because of increase leachate generation. They also assert that shredding of waste leads to other environmental benefits such as reduction of landfill gas, enhancement of hazardous waste segregation efforts, and reduction of differential settlement potential. Petitioners contend that all of these benefits will be lost if the shredding requirement is deleted. They also contend that performance of the landfill's environmental containment and control systems would be adversely affected if shredding ceased.

Petitioners have simply not demonstrated that these benefits of shredding, even if proved, would lead to substantial harm if the stay requests are denied. While the record discloses that leachate is being generated at the site, it appears that the leachate collection and removal system is working to prevent migration of waste from the site. There is no proof that ground water will be adversely impacted if shredding does not occur during the short time period before this Board can address the merits of petitioners contention.

Petitioners have also not produced proof that differential settlement would occur during the time period before this Board can act on the merits of the petitions. Our Order No. WQ 93-8 required the installation of settlement plates or other settlement measuring devices to measure actual settlement. Testimony at the hearing on this matter indicated the differential settlement does not appear to be a concern.

The County and the RWQCB presented evidence that substantial harm will not occur if the stay is denied. The County testified at the hearing that the shredding requirement was the least important of the many protective provisions contained in the waste discharge requirements and that these other provisions protect against the adverse impacts alleged by petitioners. The RWQCB also testified at the hearing that these other features were working to protect water quality.

2. Contention: Petitioners have not shown a lack of substantial harm to other interested persons or the public if a stay is granted.

Finding: The County provided testimony and evidence as to the economic hardship it was suffering because of the operation of the recycling center. A review of the record before the RWQCB discloses that economic considerations, coupled with a lack of water quality concerns, led to a deletion of the shredding requirement. Petitioners' assertions that the County could pass on the costs of continued operations of the recycling center were effectively rebutted by the County. Petitioners' assertions that the County's statements of financial harm are overstated and speculative are not supported. Again, the petitioners have not met their heavy burden of producing proof that the County would not suffer substantial harm if a stay was granted.

#### IV. CONCLUSION

The requests for a stay should be denied because petitioners have failed to establish that substantial harm would result to it or the public if the stay is denied and have failed to establish that the County would not suffer substantial harm if the stay is granted.

V. ORDER

IT IS HEREBY ORDERED that the requests for stay are denied.

VI. CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 20, 1995.

AYE:           John Caffrey  
                Marc Del Piero  
                James M. Stubchaer  
                John W. Brown

NO:           None

ABSENT:       Mary Jane Forster

ABSTAIN:     None

  
\_\_\_\_\_  
Maureen Marché  
Administrative Assistant to the Board